

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JACQUELYN WHITE,

Plaintiff,

-against-

DEPARTMENT OF CORRECTIONAL SERVICES
("DOCS"), NEW YORK STATE,
SUPERINTENDENT JOSEPH WILLIAMS,
DEPUTY SUPERINTENDENT OF SECURITY
NICHOLAS BROCCO (retired), ACTING DEPUTY
SUPERINTENDENT OF SECURITY
SALVATORE MUNAFO, LT. RONALD HAINES,
LT. GEORGE VAN VALKENBURG, AND
LT. ROBERT MURRAY,
SUED IN THEIR INDIVIDUAL AND
PROFESSIONAL CAPACITY,

Defendants.
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NOTICE OF MOTION

08-CV-0993 (JGK)(DCF)

ECF Case

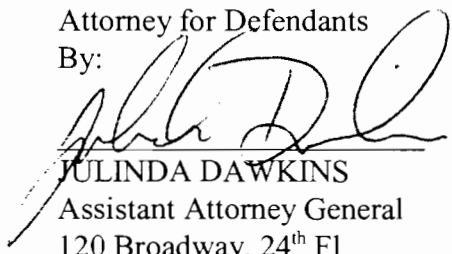
PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law dated June 30, 2008, and all other prior pleadings and proceedings herein, the undersigned, on behalf of defendants the State of New York, the New York State Department of Correctional Services ("DOCS"), Joseph Williams, Nicholas Brocco, Salvatore Munafo, Ronald Haines, George Van Valkenburg and Robert Murray will move this Court, before the Honorable John G. Koeltl, United States District Judge, at the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York, for an order pursuant 12(b)(1) and (6) of the Fed. R. Civ. P. granting defendants' partial motion to dismiss on the grounds that (a) Plaintiff's Title VII hostile work environment claim (Count II) should be dismissed for failure to state a claim; (b) Plaintiff's § 1983 due process and equal protection claims (Count III) should be dismissed for failure to state a claim;

(c) Plaintiff's § 1983 First Amendment Retaliation claim (Count III) should be dismissed for failure to state a claim; (d) Plaintiff's New York State Executive Law ("HRL") §296 claims (Count V) against the State and DOCS are barred by the Eleventh Amendment to the United States Constitution; (e) Plaintiff's New York State Executive Law ("HRL") §296 claims (Count V) are statutorily barred under Executive Law §297(9) because of Plaintiff's election to assert them before the New York State Division of Human Rights ("SDHR"); (f) New York State Executive Law ("HRL") §296 claims (Count V) and Plaintiff's Breach of Contract Claims (Count VI) against individual Defendants Williams, Brocco, Munafo, Haines, Van Valdenburg, and Murray are barred by COL § 24; (g) Plaintiff's Third, Fourth, Sixth, and Seventh claims against the State, DOCS, and the individual Defendants in their official capacities are all barred by the Eleventh Amendment, and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that papers in response to this motion, if any, must be served and filed within ten (10) business days and any reply papers shall be served within five (5) business days after service of the response pursuant to Local Rule 6.1.

Dated: New York, New York
June 30, 2008

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
By:



JULINDA DAWKINS
Assistant Attorney General
120 Broadway, 24th Fl
New York, New York 10271
(212) 416-8118

TO: Mr. Rocco G. Avallone, Esq.
Cronin & Byczek, LLP
Attorneys and Counselors at Law
The Fountains at Lake Success
1983 Marcus Avenue, Suite C-120
Lake Success, NY 11042

DECLARATION OF SERVICE

JULINDA DAWKINS, being duly sworn, deposes and says:

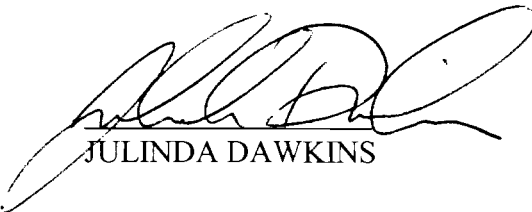
That she is an Assistant Attorney General in the office of ANDREW M. CUOMO, the Attorney General of the State of New York, Attorney for Defendants herein. On the 30th day of June, 2008, she served the annexed **Notice of Motion, Declaration of Julinda Dawkins** with annexed exhibits and **Memorandum of Law in Support of Partial Motion to Dismiss Plaintiff's Complaint** upon the following named person:

Mr. Rocco G. Avallone, Esq.
Cronin & Byczek, LLP
Attorneys and Counselors at Law
The Fountains at Lake Success
1983 Marcus Avenue, Suite C-120
Lake Success, NY 11042

Attorney for plaintiff in the within proceeding action by way of the Electronic Case Filing System for the United States District Court, Southern District of New York, as well as by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the United States Postal Service directed to said individual at the address within the State designated by him for that purpose.

I hereby affirm under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2008



JULINDA DAWKINS